IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No.305/2007

Judgment delivered on: December 06 ,2007

United India Insurance Co. Ltd. ..... Appellant.
Through: Mr.P.K. Seth & Mr.Pankaj Seth, Advocates.

versus

Smt. Meenakshi & Ors. ..... Respondents
Through: Mr.Ashok Popli, Advocate for respondent Nos.1 to 5.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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Counsel for the appellant states that as per the instructions received by him, application under Section 170 of the Motor Vehicles Act was preferred by the appellant before the Tribunal. But he has not received any instructions as regards any

order passed on the said application.

Mr.Ashok Popli, counsel appearing for the respondents, on the other hand, states that no such order on the alleged application of the appellant was passed by the Tribunal. He further states that it is more so because of the fact that the claim petition was duly contested by the driver and owner of the offending vehicle. Counsel also contends that written statement was also filed by the driver and owner of the offending vehicle, as would be apparent from Para B of the judgment. Counsel further states that even Mr.Rohit Kumar, driver of the offending vehicle appeared in the witness box. The contention of counsel for the respondent is that these facts would clearly show that there was no occasion for the Tribunal to give any directions on the alleged application of the appellant un Section 170 of the Motor Vehicles Act, as the claim petition was being contested by the owner and driver of the offending vehicle.

At this stage, it is found that Lower Court records have been received in the present case. Perusal of the Lower Court record clearly shows that no such application was even filed by the appellant as has been represented by the counsel today. Certified copy of the application on which reliance has been

placed by counsel for the appellant shows that the same pertains to some other case. Counsel for the appellant should have acted with some responsibility while making such a statement. Since no defence under Section 170 of the Motor Vehicles Act was taken over by the appellant insurance company, therefore, in view of the settled legal position, the present appeal filed by the insurance company is not maintainable. Reference in this regard is made to the judgment of the Apex Court in **National Insurance Co. Ltd. v. Nicolletta Rohtagi,** *(2002) 7 SCC 456.* Relevant paras of the said judgment is reproduced as under:-

> **"25.** We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.
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> **26.** For the aforesaid reasons, an insurer if aggrieved against an award, may file an

appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (*a*) there is a collusion between the person making a claim and the person against whom the claim has been made, or (*b*) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act."

In the light of above discussion the present appeal filed by the insurance company challenging the impugned award in question is not maintainable.

Dismissed.

KAILASH GAMBHIR, J.

December 06, 2007
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